



City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

May 13, 2014

From: Steven J. Anderson, Director, Department
of Development

Subject: Encroachment Agreement
for Lease Agreement – Ocean View
Community Beach located at 700 E.
Ocean View Avenue

Reviewed:

Ronald H. Williams Jr., Assistant City
Manager

Ward/Superward: 5/6

Approved:

Marcus D. Jones, City Manager

Item Number:

PH-4

- I. **Recommendation:** Adopt Ordinance
- II. **Applicant:** Soraya, LLC, dba Ocean View Waterslide
- III. **Description**

This agenda item is a Lease Agreement permitting Soraya, LLC to lease a portion of the Ocean View Community Beach for the operation of a giant inflatable water slide and rental of beach lounge chairs and umbrellas.

IV. **Analysis**

This Lease Agreement will permit Soraya, LLC to lease approximately 28,824 square feet of Beach at 700 E. Ocean View Avenue. Soraya's lease of the premises is restricted to a four-month period starting on May 10 and ending September 10 of each year that the lease is in effect. The term of the lease is for a one year period. Soraya has the option to renew this lease for four (4) additional consecutive one year terms. Either party may terminate this lease with a thirty (30) day written notice to the other party.

Soraya shall supply water, electricity and any other utilities needed to the Premises and will be responsible for any costs incurred for all hook up and utility charges. Soraya will also be responsible for trash disposal, janitorial services and 24 hour security services during the se period.

Hours of Operation	
Sunday to Saturday	9:00 AM to 8:00 PM

V. Financial Impact

Soraya will pay the City an annual rent in the amount of \$9,608.00, paid in four (4) monthly installments of \$2,402 for the first year. In subsequent years, should the lease move forward, the rent shall be increased by \$1,500 for every \$50,000 in gross sales over a \$150,000 threshold.

VI. Environmental

There are no known environmental issues associated with this encroachment.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

NA


IX. Coordination/Outreach

This letter has been coordinated with Department of Development – Division of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Lease Agreement

Form and Correctness Approved: 

By 
Office of the City Attorney

Contents Approved:

By 
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH SORAYA, LLC, DBA OCEAN VIEW WATERSLIDE, FOR A PORTION OF COMMUNITY BEACH, A PROPERTY IN THE CITY OF NORFOLK.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Lease Agreement between the City of Norfolk, as lessor, and Soraya, LLC dba Ocean View Waterslide (Soraya) as lessee, a copy of which is attached hereto, by which the City of Norfolk leases to Soraya a portion of that certain property known as Community Beach, in the City of Norfolk, Virginia, upon conditions specifically set forth therein, are hereby approved.

Section 2:- That the City Manager is authorized to execute said lease for and on behalf of the City.

Section 3:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

LEASE AGREEMENT

THIS LEASE AGREEMENT, ("Lease") made this _____ day of _____, 2014, between **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia, ("Lessor"), and **SORAYA, LLC** d/b/a Ocean View Waterslide, a Virginia Limited Liability Company ("Lessee").

WITNESSETH THAT:

For and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual obligations and conditions set forth below, the parties do hereby covenant and agree with each other as follows:

1. Premises.

Lessor hereby leases to Lessee and Lessee hereby rents from Lessor that certain piece or parcel of land hereinafter referred to as the "Premises" located in the City of Norfolk, Virginia, said Premises being bounded and described as set forth on **Exhibit A** hereto attached and incorporated by reference.

2. Term.

The term of this Lease shall be for a period of one (1) year, commencing on May 1, 2014, and ending on April 30, 2015. Lessee shall have the option to renew this Lease for four additional consecutive one (1) year terms; Lessee shall give Lessor notice of its desire to exercise any option sixty (60) days prior to the expiration of the then current term. Either party may terminate this Lease by providing thirty (30) days prior written notice to the other party.

3. Option for New Contract

Lessee may opt to negotiate a new lease by giving written notice to Lessor, at the notice address shown below, not less than ninety (90) days prior to the expiration date hereof.

4. **Use of Premises; conditions for use.**

Lessee's use of the Premises is restricted to a four-month period ("Use Period") starting on May 10 and ending September 10 of each year that this Lease is in effect. The sole and specific purpose for which the Premises shall be used is for the operation of a large inflatable waterslide and the rental of beach lounge chairs and umbrellas. All chairs and umbrellas will be positioned so that the lifeguards will have an unobstructed view of the water and the water's edge, as shown on the drawing hereto incorporated by reference and attached as **Exhibit B**.

5. **Rent.**

As consideration for the use of the Premises, Lessee shall pay rent in the amount of Nine Thousand Six Hundred Eight Dollars (\$9,608.00) for the first year, payable in four payments of Two Thousand Four Hundred Two Dollars (\$2,402.00) on May 1 (or on the date the Lease is executed, whichever is later), June 1, July 1 and August 1, 2014. For all subsequent years, the threshold being set at One Hundred Fifty Thousand Dollars (\$150,000.00), the rent shall be increased by One Thousand Five Hundred Dollars (\$1,500) for every Fifty Thousand Dollars (\$50,000.00) of gross sales by Lessee on the Premises above the threshold. Lessee hereby authorizes the Norfolk Commissioner of the Revenue to release its gross sales amounts to the City of Norfolk for the sole purpose of calculating rent.

6. **Liens or Encumbrances.**

Lessee shall not suffer the premises or any improvements thereon to become subject to any lien, charge or encumbrance, and shall indemnify Lessor against all such liens, charges or encumbrances. Lessee shall, within ninety (90) days after written notice thereof from Lessor, discharge or bond any mechanic's lien or other lien, charge, or order for the payment of money filed against the premises as the result of the act or omission of Lessee.

7. **Utilities, Security and Services.**

Lessee shall supply water, electricity and any other utility needed to the Premises and shall be responsible for any costs incurred for hook up and for all utility charges. Lessee shall also be responsible for services and amenities such as trash disposal, janitorial services, and security services. Lessee covenants to have a security officer on the Premises at all times, meaning twenty-four (24) hours a day during the Use Period.

8. **Quiet Possession.**

Lessor hereby covenants that Lessee shall have quiet and peaceable possession of the Premises during the Use Period, free from all encumbrances.

9. **Representatives Bound.**

The covenants, stipulations and conditions herein contained shall inure to the benefit of and shall be binding upon the successors and assigns of Lessor and the lawful successors and assigns of Lessee.

10. **Cooperation.**

Both Lessor and Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this lease.

11. **Notice.**

Any notice that either party hereto desires to give to the other shall be deemed given upon placing such notice in U.S. Mail, certified mail, return receipt requested, with postage fully prepaid, addressed as follows:

To Lessee:
Director of Development
City of Norfolk
500 East Main Street
Norfolk, Virginia 23510

With a copy to:
Norfolk City Attorney
City Attorney's Office
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510

To Lessor:
Jeff Howlett
Soraya, LLC
_____[add address]
Norfolk, Virginia 23517

With a copy to:
Bobby L. Howlett, Jr. Esquire
327 Duke Street
Norfolk, Virginia 23510

12. Lessee's Obligation to Insure.

- (a) Lessee shall maintain during the term of this Lease insurance of the types and in the amounts described below. All general liability and automobile/vehicle liability policies will be written in an "occurrence" form unless otherwise specifically approved by the City. The CITY OF NORFOLK will be named on such liability policies as "Additional Named Insured" on such policies. Insurance policies shall provide that the Lessee will receive at least thirty (30) days written notice in the event of cancellation of, or material change in, any of the policies. If the Lessee fails to maintain the insurance as set forth in this Lease, the City shall have the right, but not the obligation, to purchase such insurance at Lessee's expense.
- (b) COMMERCIAL GENERAL LIABILITY INSURANCE. Lessee shall maintain Commercial General Liability Insurance (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence, \$3,000,000 general aggregate. CGL insurance shall be written on an approved ISO form for coverage in the Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent Lessees, products-completed operations, personal injury and liability assumed under insured contract.
- (c) WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE: Lessee shall maintain the applicable statutory Workers' Compensation Insurance, and Employer's Liability Insurance with a limit of at least \$500,000 per accident/disease, and policy limit of \$1,000,000.
- (d) AUTOMOBILE/MOTOR VEHICLE LIABILITY INSURANCE: Lessee shall maintain Automobile Liability insurance with a limit of not less than \$ 2 million combined single

limit; or, Bodily Injury \$1,000,000 each person, \$2,000,000 accident, and Property Damage \$100,000 each accident. Such insurance shall cover liability arising from any motor vehicle as defined by Commonwealth of Virginia laws and shall include coverage for owned, hired and non-owned motor vehicles, as well as uninsured and underinsured motorists. Coverage shall be written on an approved ISO Form for coverage in the Commonwealth of Virginia.

- (e) **INSURANCE POLICIES/CERTIFICATE OF INSURANCE.** Lessee shall furnish the CITY with two (2) copies of the policies, or a certificate(s) of insurance evidencing policies, required in this section 12 of this Lease. In the event of cancellation of, or material change in, any of the policies, Lessee shall notify the City within at least 14 days after receiving notice of such cancellation or policy change and provide evidence that insurance coverage is in place to meet the requirements of this Lease. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Lease, Lessee shall furnish a certificate of insurance evidencing renewal of such coverage to the City within 10 days of the effective date of such renewal. All certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the requirements of this Lease. Failure of the City to demand such certificates or other evidence of full compliance with these requirements shall not be construed as a waiver of the Lessee's obligation to maintain such insurance.
- (f) **SUBCONTRACTOR'S INSURANCE:** The Lessee shall require each of his contractors or sub-Contractors who are working in the Premises or on City property on lessee's behalf to take out and maintain during the life of the contract or subcontract insurance coverage of the same type and limits required of the Lessee for work performed by its contractor or sub-contractor. Lessee shall furnish at least one copy the Sub-Contractor's policies/certificate to the City.

13. Defense and Indemnification.

Lessee hereby assumes all risk of and responsibility for, and agrees to defend, indemnify and hold harmless Lessor, from and against any and all claims, demands, suits, actions, recoveries, judgments, and costs and expenses in conjunction therewith made, of any nature whatsoever, brought or obtained on account of the loss of life, property or injury or damages to the person or property of any person, whether such person be Lessor, its agents or employees, and any contractors or subcontractors employed by Lessee, their agents or employees, or any third person in no way connected to the parties hereto, which loss of life or property, or injury or damage to persons or property, shall be due to or result from, or be in any way connected with Lessee's use of

the premises under this lease. Lessee is not required to defend, indemnify or hold harmless Lessor, its officers, agents and employees or any of them, from assertions that Lessor or said persons, or any of them, were negligent in the use of the premises, nor is Lessee required to defend, indemnify or hold harmless Lessor and said persons from liability based on Lessor's and/or said persons' negligence in the use of the Premises.

14. **Assignment.**

Lessee shall have the right to assign its interest in this lease to a related entity, provided that Lessee shall first obtain the written consent of Lessor, and, upon such assignment, Lessee shall still remain liable for the performance of all of its obligations hereunder.

15. **Surrender of Premises.**

At the end of every Use Period, Lessee shall return Premises to Lessor essentially in their original condition.

16. **Entire Lease.**

This lease, including its attachments and any other documents referred to herein or delivered pursuant hereto, contains the entire Lease of the parties with respect to the premises. There are no restrictions, Leases, promises, warranties, covenants or undertakings other than expressly set forth herein.

17. **Headings to Be Disregarded.**

The captions of the numbered paragraphs of this lease are for the purpose of identification and convenience only, and they are to be disregarded in the construction or interpretation of this lease.

18. **Governing Law.**

This lease shall be governed, construed and enforced by and in accordance with

the laws of the Commonwealth of Virginia. Any suit or controversy arising under this lease shall be litigated in the General District Court or the Circuit Court of the City of Norfolk.

19. **Amendments.**

This Lease may be amended or modified only by a writing signed by authorized agents of both Lessor and Lessee.

IN WITNESS WHEREOF, Lessor and Lessee have caused this lease to be executed and sealed as of the date first above written.

SORAYA, LLC
dba Ocean View Waterslide

By: _____

Print Name and Title: _____

CITY OF NORFOLK

Marcus D. Jones, City Manager

Approved as to Contents:

Director of Development

Approved for Form and Correctness:

Deputy City Attorney

Lease Agreement/Soraya, LLC**Legal Description**

All those certain lots, pieces or parcels of land situate, lying and being in the City of Norfolk, Virginia, said parcels being further described as follows: COMMENCING at a point that is the southeast corner of Lot 25 as shown on that certain plat entitled, "Subdivision of Pinewell By - The - Bay," dated June 13, 1989, and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia in Map Book 45 at Page 103A; thence, N 45°-55'-00" E, 423.53 feet, more or less, along the eastern line of Lot 25 and other lots as shown on the aforesaid plat to the northeast corner of Lot 21; thence, S 68°-23'-12" E, 314.54 feet, to the point of BEGINNING of the first parcel; thence, N 43°-11'-58" E, 50.00 feet to a point; thence, S 46°-48'-02" E, 273.00 feet to a point being the point of commencement for the second parcel; thence, S 43°-11'-58" W, 82.20 feet to a point; thence, N 46°-48'-02" W, 104.00 feet to a point; thence, N 43°-11'-58" E, 32.20 feet to a point; thence, N 46°-48'-02" W, 169.00 feet to the point of beginning of the first parcel; thence, Commencing at the aforesaid point of commencement for the second parcel, S 73°-42'-11" E, 16.45 feet to the point of BEGINNING for the second parcel; thence, S 46°-48'-02" E, 184.00 feet to a point; thence, S 43°-11'-58" W, 62.50 feet to a point; thence, N 46°-48'-02" W, 184.00 feet to a point; thence, N 43°-11'-58" E, 62.50 feet to the point of beginning of the second parcel.

The above described first parcel contains 0.390 acre, more or less, and the second parcel contains 0.264 acre, more or less, for a total acreage of 0.654 acre.

